SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

Term 1961

No. [redacted] 103

MILDRED C. TRIVETTE - - - - - *Petitioner*

vs.

NEW YORK LIFE INSURANCE COMPANY - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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No. .....

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vs.

NEW YORK LIFE INSURANCE COMPANY - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners herein pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case therein designated as No. 13,910, on February 28th, 1961, denying the petition for rehearing submitted by the plaintiff which sought reconsideration of the opinion rendered on October 31st, 1960, and the order of same date affirming the District Court's judgment.

I. OPINIONS BELOW

The opinion of the District Court not reported appears in the Appellant's Appendix filed in the U. S. Circuit Court of Appeals for the Sixth Circuit, pp.

15a-28a. The opinion of the Circuit Court is attached to the Certified Record accompanying this petition. Both opinions are reproduced as appendices to this petition.

II. JURISDICTION

The final judgment of the Court of Appeals was dated February 28th, 1961. This Court has jurisdiction to review the judgment by writ of certiorari under U. S. C. 28, Sec. I, 254 (1) and under Rule 19-1-(b) of this Court.

III. QUESTIONS PRESENTED

Question 1—Did the District Court err in refusing to submit the question of intentional suicide within the meaning of the life insurance policy involved, to the jury?

Question 2—Is submitting or not submitting an issue of fact to a jury a matter of substantive law, or a matter of procedure?

Question 3—Was there sufficient evidence of lack of intent to require submission to the jury on the question of suicide?

IV. CONSTITUTION AND STATUTES INVOLVED

Petitioners rely upon Section II, Article II, of the Constitution of the United States, the Seventh Amendment to the Constitution of the United States and Rule 38-a of the Federal Rules of Civil Procedure.

Pertinent portions of Sec. II of Article III. and all of the others are set out as follows:

(a) Art. III — Sec. II — U. S. Constitution: "The judicial power shall extend to all cases, in law and equity, arising . . . . between citizens of different states, ... "

(b) Amendment VII — U. S. Constitution: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

Rule 38-a—Federal Rules of Civil Procedure:

"The right of trial by jury as declared by the Seventh Amendment to the Constitution, or as given by a Statute of the United States shall be preserved to the parties inviolate."

(28 U.S.C.A. Volume Rules 34-51, p. 157).

V. STATEMENT OF THE CASE

Plaintiff instituted suit in the State Court in March, 1958, seeking recovery aggregating $30,000.00 under double indemnity (accident) provisions of certain life insurance policies issued on the life of Maurice Trivette, who died on October 19, 1957. The face amount of the policies had theretofore been paid. Double indemnity was denied and defended under the suicide clauses contained in the policies. (See Appendix, pp. 4-a & 5-a). The policies had been in force since 1944 and 1956, respectively. (See Appendix 3-a).

On October 19th, while in the bedroom with his wife, in a fit of violent temper, similar to previous exhibitions, he jerked a 44-caliber pistol from his belt underneath his coat and fired. The bullet entered his right temple, ranging upwards at a sharp angle, (about 50 degrees), passed through his head, and entered the ceiling. He died as a result of this gunshot wound.